



STATE OF CONNECTICUT

OFFICE OF VICTIM ADVOCATE
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Testimony of Michelle Cruz, Esq., State Victim Advocate
Judiciary Committee
Monday, March 7, 2011

Good morning Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

Raised Senate Bill No. 1029, An Act Concerning Victim Impact Statements in Capital Murder Cases

Raised House Bill No. 6425, An Act Revising the Penalty for Capital Felonies

First, as the State Victim Advocate, I must be clear that the Office of the Victim Advocate (OVA) does not have a position as to whether Connecticut should have or should not have the death penalty available in certain criminal prosecutions, as crime victims are not united regarding the death penalty. As you know, some victims vehemently support the death penalty while other victims strongly oppose the death penalty. That being said, crime victims want to be allowed an opportunity to be heard as to how their lives have been impacted by the crime in question. The opportunity to give an impact statement is a right that all crime victims should be entitled. Although not every victim will choose to partake in an impact statement, for it is a very private and personal decision, the opportunity should still be available.

All crime victims have the constitutionally protected right to make a statement to the court prior to sentencing the defendant. However, although there is no law or precedent against a victim making an impact statement prior to the imposition of sentence in a death penalty case, the state's current practice does not allow for this to occur. If there continues to be a death penalty in Connecticut, the OVA wants to ensure that crime victims' rights are protected regardless of whether the defendant's sentence exposure involves a capital sentence or not. Section 53a-46d of general statutes allows for a victim to provide an impact statement to be placed in the court files prior to imposition of sentence upon a defendant found guilty of a crime punishable by death. The current barrier is that some interpret, "prior to imposition of sentence upon a defendant" as AFTER the sentence has been determined by a jury, or if there is no jury, the court. Raised Senate Bill No. 1029 makes it clear that a victim impact statement is presented personally, by a surviving family member of the victim, before the court or jury and prior to the jury or the court deliberating the sentence of the defendant. Additionally, the proposal ensures that a victim impact statement may include photographs and/or video of the victim. I urge the Committee's favorable report on Raised Senate Bill No. 1029.

Although the OVA does not take a position in support of or opposition to the death penalty, as previously mentioned above, it is important for the Committee to recognize that Section 21 of Raised House Bill No. 6425, if supported, must be clarified to ensure that a victim impact statement is presented at a time in the process that has meaning and impact on the finding


body. That time is during the sentencing phase hearing held before the jury or the court and prior to deliberating the sentence. Therefore, the OVA respectfully requests that if favorable consideration is given to Raised House Bill No. 6425, the Committee further amend Section 21 to clarify this barrier; a change that will only impact the limited number of pending prosecutions for a crime punishable by death, committed prior to the effective date of this proposal.

Further, in capital felony cases, the statute on its' face, and as it is practiced, even if amended by this proposal, stands in contradiction with the constitution as it pertains to crime victims' rights to provide a meaningful impact statement. In a capital felony case, where the death penalty is sought, a special verdict is returned by the jury, or judge, where upon the sentence of the court has been determined. During the sentencing, the judge simply and formally imposes the sentence. There is no place, currently, for the victims' surviving family members to provide an impact statement to the jury or court; the victim's surviving family is currently only permitted to provide an impact statement after the jury, or judge, returns the special verdict for the offender, "upon the imposition of sentence". Therefore, a victim's right to be heard is essentially meaningless. In order to uphold crime victims' Constitutional right to be heard, the victim impact statement should be presented to the court or jury prior to the return of a special verdict so that the victim's opinion of the sentence can be considered.

The United States Supreme Court decision, Payne vs. Tennessee, 501 U.S. 808, 1991, has held that the United States Constitution does not bar victim impact evidence from being admitted during the penalty phase of a capital trial. Rather, the decision held that the victim impact evidence is relevant and legitimate information regarding the appropriate punishment for the defendant and that the information violates no right of the defendant. The fear that is often voiced that the jury or court will be swayed by the impact statement of a victim is ill found and those arguments have been rejected by the U.S. Supreme Court. First, as stated above, not all crime victims and/or their family members are in support of the death penalty. Furthermore, the finder of fact, either a jury or a judge, in a capital felony case, where the death penalty has been sought, has already been found capable of weighting evidence, viewing gruesome autopsy photographs, and being able to hear the facts of a death penalty case. To prohibit the victims' and/or the surviving family's voice during the penalty phase, simply re-victimizes the crime victim and their family and undermines the abilities of the fact finder.

Again, Section 21 of Raised House Bill 6425 must be amended, if favorably supported by the Committee, so that the statute comports with the constitutional rights afforded to crime victims. Thank you for consideration of my testimony.

Sincerely,


Michelle Cruz, Esq.
State Victim Advocate